



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

July 15, 2013

Robert Law, PhD  
Project Coordinator  
de maximis, inc.  
186 Center Street, Suite 290  
Clinton, NJ 08809

Re: Diamond Alkali, Lower Passaic River Study Area  
Administrative Settlement Agreement and Order on Consent for Removal Action,  
US EPA Region 2 CERCLA Docket No. 02-2012-2015

Dear Dr. Law:

This letter responds to the notice provided by your letter dated June 29, 2013, on behalf of the Cooperating Parties Group (CPG), of an event that prevents the CPG from mobilizing to the RM 10.9 Removal Area according to the schedule agreed upon between the U.S. Environmental Protection Agency (EPA) and the CPG. While EPA does not agree that the event is a *force majeure* event, EPA approves the requested change in schedule.

The event in question consists of the continuing non-operational state of the Bridge Street Bridge between Newark and Harrison, which prevents the CPG from moving equipment to the RM 10.9 Removal Area. The CPG's contractors have been aware that the Bridge was not operational since February 2013, but were under the impression that it would be repaired by April 29, 2013. The CPG's contractors contacted the bridge authorities in mid-June 2013, and learned on June 20, 2013 that the repairs were not complete. The CPG understands that the Bridge will be repaired, and restored to operating condition, by July 22, 2013. This will cause a two-week delay in mobilization.

The CPG has indicated to EPA that it is in close communication with Essex and Hudson Counties to monitor repairs and offer assistance. The CPG also has expressed the opinion that the two week delay will not cause or contribute to an endangerment to public health, welfare or the environment.

Based on the representations in the June 29, 2013 letter, EPA approves the extension of the schedule by two weeks to allow time for the repair of the Bridge Street Bridge. Administrative Settlement Agreement and Order on Consent for Removal Action, CERCLA Docket No. 02-2012-2015 (AOC) requires that implementation begin within 60 days of EPA's approval of the

final design. EPA gave conditional final approval of the Final Design Report dated May 8, 2013 on June 3, 2013. As long as the work begins by August 2, 2013, the CPG's implementation remains consistent with the AOC requirements.

Based on the facts presented by the CPG, EPA does not view the non-functional status of the Bridge Street Bridge as a *force majeure* event, for the following reasons. First, in the period between April 29, 2013, the date that the contractors understood the Bridge Street Bridge repairs would be completed, and mid-June 2013, when the CPG's contractors sent final notices to the bridge authorities, there appears to have been no coordination, or any contact at all, between the CPG and the bridge authorities. Since the discovery in February 2013 of problems with the Bridge Street Bridge, the CPG and its contractors do not appear to have monitored the repairs, offered assistance, or done anything at all to have prevented or minimized the delay.

In addition, EPA notes that prior to June 25, 2013, the CPG had not informed EPA of the problem with the Bridge Street Bridge. This significant problem should have been brought to EPA's attention during one of the many teleconferences that EPA and the CPG have held in recent months, and should have been identified in the CPG's monthly progress reports as an anticipated problem and/or an anticipated delay. Timely notification of an anticipated problem or delay would have allowed EPA and the CPG to work together on a solution.

Given the problems that have arisen with respect to the Bridge Street Bridge, EPA is very concerned that the CPG's current plan, which requires opening and closing five bridges on a daily basis, may lead to significant problems and delays during dredging. EPA has directed the CPG to prepare a contingency plan, which we expect will consider other options for mobilization/demobilization, as well as sediment transport downriver. We look forward to receipt of that plan.

EPA appreciates that the CPG has been working diligently to meet the schedule for the RM 10.9 removal action and we agree that a two week delay will not cause or contribute to an endangerment to public health, welfare or the environment, but we expect greater diligence by the CPG's contractors in anticipating problems, informing EPA of potential problems, and working to avoid impacts to the schedule as a result of such anticipated or potential problems – before they occur.

Sincerely yours,



Stephanie Vaughn  
Remedial Project Manager

cc: S. Flanagan, ORC  
P. Hick, ORC  
R. Basso, ERRD